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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 77-6219

THOMAS BALDASAR, Petitioner

-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent

(ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
SECOND JUDICIAL DISTRICT)

SUPPLEMENTAL BRIEF FOR PETITIONER

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Counsel for Petitioner

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On March 5, 1979, this Court in Scott v. Illinois, ___ U.S. ___, 39 C.C.H. S.Ct. Bull. B1339, 1344 (1979), adopted "actual imprisonment as the line defining the constitutional right to appointment of counsel". In doing so, the Court in a five to four decision rejected the contention that the State's were constitutionally required to provide counsel whenever imprisonment is an authorized penalty. Having answered this question petitioner asks that certiorari be granted in his case to resolve the remaining issue of whether the Sixth Amendment as interpreted in Argersinger v. Hamlin, 407 U.S. 25 (1972), and Burgett v. Texas, 398 U.S. 109 (1967), prohibits the use of a prior uncounseled misdemeanor conviction to increase a sentence of imprisonment under an enhanced penalty statute.[1]

Having approved uncounseled convictions where only a fine is imposed, this Court should provide guidance to the many jurisdictions on the question of their collateral consequences. Both the concurring opinion in Scott v. Illinois, of Mr. Justice Powell 39 C.C.H. S.Ct. Bull. at B1346, and the dissenting opinion of Mr. Justice Brennan, 39 C.C.H. S.Ct. Bull. at B1354, n. 13, note that the collateral consequences of these convictions remain an unsettled area of law. See also Note, Argersinger v. Hamlin and Collateral Use of Prior Misdemeanor Convictions of Indigents Unrepresented by Counsel at Trial, 35 Ohio St. L. J. 168 (1974). In petitioner's case the direct consequence of the uncounseled misdemeanor conviction was an extra two years added to the defendant's maximum sentence.

Petitioner urges this Court to accept certiorari in his case. There, of course, would be no inconsistency with the holding of Scott v. Illinois, were this Court to allow counselless misdemeanor convictions where no imprisonment was imposed, while at the same time prohibiting their use for enhancement purposes.

Respectfully submitted,

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1. A substantial number of jurisdictions are in conflict on the issue. Those finding the use of uncounseled convictions for enhancement or impeachment purposes unconstitutional include: State v. Franklin, 337 So.2d 1152 (La.S.Ct. 1976); State v. Strange, 308 So.2d 795 (La.S.Ct. 1975); Alexander v. State, 258 Ark. 633, 527 S.W.2d 927 (1975); Maghe v. State, 507 P.2d 950 (Okla.Crim.App., 1973); State v. Kirby, 33 Ohio Misc. 48, 289 N.E.2d 406 (1972); Commonwealth v. Barrett, 322 N.E.2d 89 (Mass.App., 1975); State v. Reagan, 103 Ariz. 287, 440 P.2d 907 (1968); and Potts v. Estelle, 529 F.2d 450 (5th Cir., 1976).

Those reaching the opposite conclusion including the Illinois Appellate Court in this case are: Aldrighetti v. State, 507 S.W.2d 770 (Tex.Cr.App., 1974); and State v. McGrew, 127 N.J. Super 226, 317 A.2d 390 (1974).